

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JEROME BYRD, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">v.</div> NJ DEPARTMENT OF CORRECTIONS, et al., <div style="text-align: center;">Defendants.</div>	: : : : : : : : : : :	Civ. No. 17-0016 (RBK) (JS) OPINION
---	---	---

ROBERT B. KUGLER, U.S.D.J.

I. INTRODUCTION

Plaintiff, Jerome Byrd, is a state prisoner at the South Woods State Prison in Bridgeton, New Jersey. He is proceeding *pro se* with a civil rights complaint filed pursuant to 42 U.S.C. § 1983. At this time, this Court must screen the complaint pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A to determine whether it should be dismissed as frivolous or malicious, for failure to state a claim upon which relief may be granted, or because it seeks monetary relief from a defendant who is immune from suit. For the following reasons, the complaint will be dismissed without prejudice for failure to state a claim upon which relief may be granted.

II. BACKGROUND

The allegations of the complaint will be construed as true for purposes of this screening opinion. Mr. Byrd names as defendants: (1) NJ Department of Corrections; (2) Willie Bonds – Administrator South Woods State Prison; (3) Gary Lanigan – Commissioner of New Jersey Department of Corrections; (4) S.C.O. Brown; and (5) S.C.O Jackson.

Mr. Byrd’s allegations center on an incident that occurred at the South Woods State Prison on December 20, 2014. He states that on that date, “an inmate from another housing unit

entered my cell and attacked me[.] [M]y safety and security was not protected as it should have been per my federal and state constitutional rights.” (Dkt. No. 1 at p. 4) Mr. Byrd alleges that the defendants Lanigan and Bonds were negligent as they irresponsibly allowed incompetent officers to secure his safety and well-being. (*See id.* at p.3)

Mr. Byrd seeks monetary damages as relief in the complaint.

III. LEGAL STANDARDS

Under the Prison Litigation Reform Act, Pub.L. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (Apr. 26, 1996) (“PLRA”), district courts must review complaints in those civil actions in which a prisoner is proceeding *in forma pauperis*, *see* 28 U.S.C. § 1915(e)(2)(B), seeks redress against a governmental employee or entity, *see* 28 U.S.C. § 1915A(b), or brings a claim with respect to prison conditions, *see* 42 U.S.C. § 1997e. The PLRA directs district courts to *sua sponte* dismiss any claim that is frivolous, is malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *see* 28 U.S.C. § 1915(e)(2)(B).

“The legal standard for dismissing a complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) is the same as that for dismissing a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).” *Schreane v. Seana*, 506 F. App’x 120, 122 (3d Cir. 2012) (citing *Allah v. Seiverling*, 229 F.3d 220, 223 (3d Cir. 2000)); *Mitchell v. Beard*, 492 F. App’x 230, 232 (3d Cir. 2012) (discussing 42 U.S.C. § 1997e(c)(1)); *Courteau v. United States*, 287 Fed.Appx. 159, 162 (3d Cir. 2008) (discussing 28 U.S.C. § 1915A(b)). That standard is set forth in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), as explicated by the United States Court of Appeals for the Third Circuit. To survive the court's screening for failure to state a claim, the complaint must allege ‘sufficient factual matter’

to show that the claim is facially plausible. *See Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Fair Wind Sailing, Inc. v. Dempster*, 764 F.3d 303, 308 n.3 (3d Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678). “[A] pleading that offers ‘labels or conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’ ” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

Pro se pleadings, as always, will be liberally construed. *See Haines v. Kerner*, 404 U.S. 519 (1972). Nevertheless, “*pro se* litigants still must allege sufficient facts in their complaints to support a claim.” *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013) (citation omitted).

IV. DISCUSSION

A plaintiff may have a cause of action under 42 U.S.C. § 1983 for certain violations of constitutional rights. Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Thus, to state a claim for relief under § 1983, a plaintiff must allege first, the violation of a right secured by the Constitution or laws of the United States, and second, that the alleged deprivation was committed or caused by a person acting under color of state law. *See Harvey v.*

Plains Twp. Police Dep't, 635 F.3d 606, 609 (3d Cir. 2011) (citations omitted); *see also West v. Atkins*, 487 U.S. 42, 48 (1988).

This Court construes Mr. Byrd's complaint as attempting to assert a failure to protect claim against the defendants. To state a claim against a prison official for failure to protect, "the inmate must plead facts that show: (1) he was incarcerated under conditions posing a substantial risk of serious harm, (2) the official was deliberately indifferent to that substantial risk to his health and safety, and (3) the official's deliberate indifference caused him harm." *Bistrrian v. Levi*, 696 F.3d 352, 367 (3d Cir. 2012) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Hamilton v. Leavy*, 117 F.3d 742, 746 (3d Cir. 1997)). "Deliberate indifference" is a subjective standard whereby "the prison official-defendant must actually have known or been aware of the excessive risk to inmate safety." *Id.* (citing *Beers-Capitol v. Whetzel*, 256 F.3d 120, 125 (3d Cir. 2001)). As noted by the Third Circuit:

It is not sufficient that the official should have known of the risk. [*Beers Capitol*, 256 F.3d at] 133. A plaintiff can, however, prove an official's actual knowledge of a substantial risk to his safety "in the usual ways, including inference from circumstantial evidence." *Farmer*, 511 U.S. at 842. In other words, "a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.*

Bistrrian, 696 F.3d at 367.

The complaint does not allege with any facial plausibility and specificity that Mr. Byrd was incarcerated under conditions posing a substantial risk of serious harm to him or that any of the defendants were deliberately indifferent to that risk. Accordingly, the complaint fails to state a failure to protect claim against any of the defendants. Thus, Mr. Byrd fails to state any federal claim for relief.

As there are no more federal claims remaining against any of the defendants, any remaining potential basis for Mr. Byrd's state law claims is supplemental jurisdiction pursuant to 28 U.S.C. § 1367. However, when a court has dismissed all claims over which it had federal question jurisdiction, it has the discretion to decline to exercise supplemental jurisdiction over the remaining state law claims. *See id.* § 1367(c)(3). Because the federal claims against the defendants no longer remain, this Court will exercise its discretion to decline supplemental jurisdiction over any state law claims Mr. Byrd is pursuing in his complaint.

V. CONCLUSION

For the foregoing reasons, the complaint will be dismissed without prejudice as Mr. Byrd fails to state a federal claim for relief and this Court declines to exercise supplemental jurisdiction over Mr. Byrd's state law claims. Mr. Byrd shall be given the opportunity to file a proposed amended complaint should he elect to do so that shall also be subject to screening. An appropriate order will be entered.

DATED: March 23, 2017

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge